

Excerpts
Planning Commission Minutes
August 14, 2002

Application No. UP-601-02, Richmond 20MHz, LLC, d/b/a NTELOS (continued from July 10, 2002 meeting): Request for a Special Use Permit, pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance to authorize a 198-foot self-supporting communications tower with associated ground-mounted equipment within a leased area located on a portion of the property of Seaford Baptist Church, located at 1311 Seaford.

Ms. Amy Parker, assisted by an audiovisual presentation, summarized the memorandum to the Commission dated August 1, 2002, in which the staff recommended approval. She noted that the applicant has amended their permit plans to indicate access across the Seaford Baptist Church property rather than via Walkin Lane since the date of the memorandum.

Mr. Semmes remarked that the County has made efforts to reduce the visual effects of communications towers by use of camouflage and other devices.

The Chair opened the public hearing.

Sheldon Franck, Esq., Geddy, Harris, Franck & Hickman, 516 South Henry Street, Williamsburg, Virginia, represented the applicant. He named several key issues in favor of approving the tower, which included the need for wider communications coverage in the Seaford area and minimal visual impact due to the site's location with a heavily wooded area.

Ms. Rose Camm, 109 Walkin Lane, said her greatest concern was the possible use of Walkin Lane that divides her property from the proposed site as an alternative access. She said her family has maintained the private lane since 1942 and she continues to do so. She recommended that, if approved, the applicants be required to improve and maintain the road. She would be inconvenienced but would obtain no revenue from its use, she added. Ms. Camm also was concerned about health risks and possible interference with electronics reception.

In response, Mr. Hendricks indicated that access issues would be resolved at time of site plan approval.

Mr. Marc Cornell, Site Acquisition Manager for NTELOS, explained that the applicant operates more than 700 antenna sites in Virginia and North Carolina, some of which are closer to residences than the proposed site would be to Ms. Camm's house, and he was not aware of any complaints from any property owner for any type of interference. He indicated that the Federal Communications Commission (FCC) requires providers to maintain their towers to prevent interference and the applicant provides the highest level of maintenance at all times.

Mr. Heavner inquired if the applicant could meet its needs with a shorter tower, such as 140 feet tall. Mr. Cornell said adequate service provision would require a tower taller than 140 feet. He said the number of possible co-locators also would be reduced on a shorter tower.

Mr. Semmes inquired if the County could require the applicants to maintain the private lane next to Ms.

Camm's property. According to Mr. James Barnett, County Attorney, while the Zoning Ordinance does not address long-term maintenance of private roads, the applicants would have to submit a site plan including any improvements needed to the road. He noted that the road's ownership and whether it is private property cannot be determined because existing land records are not clear for the lane. He noted that Ms. Camm may have an exclusive claim or an easement by virtue of having maintained it. The applicant is not guaranteed a right to use it, although the legal system could make the final determination if it became necessary.

Responding to a question from Mr. Barba regarding maximum allowable tower heights, Mr. Carter said the County ordains no maximum height for communications towers but endeavors to maximize coverage for the applicant and for co-locators, noting there is a need for fewer towers when more co-locations are utilized.

The Chair closed the public hearing.

PC02-22

On motion of Mr. Semmes, which carried 5:0 (Mr. Ptasznik and Ms. White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT TO AUTHORIZE A 198-FOOT SELF-SUPPORTING MONOPOLE COMMUNICATIONS TOWER WITH ASSOCIATED GROUND MOUNTED EQUIPMENT AT 1311 SEAFORD ROAD

WHEREAS, Richmond 20MHz, LLC d/b/a NTELOS has submitted Application No. UP-601-02, which requests a special use permit pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance to authorize construction of a 198-foot freestanding monopole communications tower with associated equipment on a portion of the parcel located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that Application No. UP-601-02 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize construction of a 198-foot freestanding monopole communications tower with associated equipment on a portion of the

16.07 acre parcel of land located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311, subject to the following conditions:

1. This use permit shall authorize the construction of a freestanding monopole communications tower with associated equipment on a portion of the 16.07 acre parcel of land located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311.
2. The height of the tower shall not exceed 198 feet.
3. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the County prior to commencement of land clearing or any construction activity on the subject property. Except as modified herein, said plan shall be substantially in conformance with the sketch plan submitted by the applicant titled "NTELOS Telecommunications Facility; Seaford (RMB 6204-02); 1311 Seaford Road, Seaford, Virginia;" Sheets 1 – 3; dated 7/23/02, prepared by Johnson, Merriman & Thompson Engineering, received by the Planning Division July 31, 2002. As part of the site plan submittal, the applicant shall prepare a frequency intermodulation study to determine the impact on current communication transmissions for the York County Departments of Fire and Life Safety and General Services, Sheriff's Office, School Division, and the Intrac Sewer Telemetry System. Should any equipment associated with this facility at any time during the operation of the tower be found by the County to cause interference with County communications, the applicant shall be responsible for the elimination of said interference within twenty-four (24) hours of receipt of notice from the County.
4. Construction and operation of the tower shall be in conformance with the performance standards set forth in Sections 24.1-493 and 24.1-494 of the Zoning Ordinance.
5. The applicant shall submit to the County a statement from a registered engineer certifying that NIER (nonionizing electromagnetic radiation) emitted from the tower does not result in a ground level exposure at any point outside such facility that exceeds the maximum applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute.
6. A report from a registered structural or civil engineer shall be submitted indicating tower height and design, structure installation, and total anticipated capacity of the structure (including number and types of users that the structure can accommodate). These data shall satisfactorily demonstrate that the proposed tower conforms to all structural requirements of the Uniform Statewide Building Code and shall set out whether the tower will meet the structural requirement of EIA-222E, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
7. Alternative access to the site via Walkin Lane may be permitted provided, prior to site plan approval and satisfactory to the Zoning Administrator and County Attorney, documentation is submitted to the County verifying lawful authority of the property owner and the applicant as their lessee to use the Walkin Road right-of-way for purposes of ingress, egress, and installation and maintenance of utilities associated with the proposed telecommunications facility.

8. Advertising and signage on the tower shall be expressly prohibited, except for warning signs associated with the operation of the tower or its equipment.
9. Prior to site plan approval, the applicant shall submit written statements from the Federal Aviation Administration, Federal Communications Commission, and any other review authority with jurisdiction over the tower, stating that the proposed tower complies with regulations administered by that agency or that the tower is exempt from those regulations.
10. Evergreen planting material shall be installed for screening as deemed necessary by the Zoning Administrator pursuant to Section 24.1-240 et. seq.
11. If at any time use of the communications tower ceases, the owner of the subject property on which the tower is located shall dismantle and remove it within six (6) months after ceasing to use it, unless:
 - (2) A binding lease agreement or letter of intent with another wireless communications provider has been executed in which case an additional six (6) months shall be granted. If a letter of intent is provided, the execution date for a binding lease agreement shall not extend more than (12) months beyond the time the use of the tower ceases, or
 - (3) The County requests, in writing, that the tower be reserved for County use.
12. Accessory facilities shall not include offices, vehicle storage, or outdoor storage unless permitted by the district regulations.
13. Evidence shall be provided prior to receipt of a building permit that the Virginia State Corporation Commission has been notified that a communication facility is to be constructed.
14. The equipment building and associated equipment shall be completely enclosed by a security fence to the satisfaction of the County. To facilitate screening of the facility, green netting of a type and materials acceptable to the Zoning Administrator shall be installed on the fence surrounding the facility.
15. The communication tower shall be gray in color. Should Federal Aviation Administration requirements dictate special markings, tower lighting shall be used in lieu of multi-color painting. If painting is required, a tower maintenance plan shall be submitted to and approved by the County.
16. No microwave dishes, conical shaped antennae, or other dish shall be permitted on the tower.
17. The communications tower shall be structurally designed to accommodate no fewer than three (3) wireless users capable of supporting either PCS or cellular antenna arrays. If space is available, the County shall have the right of first refusal for leasing a space on the tower to place an antenna in support of operations consistent with the County's Department of Fire and Life Safety.

18. Significant modifications to a previously approved communications tower as determined by the Zoning Administrator shall require that a new use permit application be submitted for review in accordance with the provisions of this section. Modifications can be administratively approved if the Zoning Administrator determines the modification to be minor.
